

CHAPTER 102
PROCEDURES FOR CHARGING AND
INVESTIGATING INCIDENTS OF ABUSE
OF STUDENTS BY SCHOOL EMPLOYEES

281—102.1(280) Statement of intent and purpose. It is the purpose and intent of these rules to create a uniform procedure for the reporting, investigation, and disposition of allegations of abuse of students directly resulting from the actions of school employees or their agents. The scope of this policy is limited to protecting children in prekindergarten and K-12 educational programs.

281—102.2(280) Definitions.

“*Abuse*” may fall into either of the following categories:

1. “*Physical abuse*” means nonaccidental physical injury to the student as a result of the actions of a school employee.

2. “*Sexual abuse*” means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior, or sexual harassment by the school employee toward a student.

“*Board of educational examiners*” means the state board as created in Iowa Code chapter 272.

“*Designated investigator*” means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a private school, at level one, to investigate allegations or reports of abuse of students by school employees and shall also refer to the appointed alternate.

“*Incident*” means an occurrence of behavior that meets the definition of physical or sexual abuse in these rules.

“*Injury*” occurs when evidence of it is still apparent at least 24 hours after the occurrence.

“*Nonpublic school*” means any school in which education is provided to a student, other than in a public school or in the home of the student.

“*Preponderance of evidence*” means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.

“*Public school*” means any school directly supported in whole or in part by taxation.

“*Reasonable force*” is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

“*School employee*” means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or any administrator of a public school district.
2. The board or authorities in control of a nonpublic school.
3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.
4. A residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: certificated (licensed) and noncertificated (unlicensed). A certificated employee holds an Iowa teacher’s certificate issued by the department of education or a license issued by the state board of educational examiners.

“*Sexual harassment*” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or

3. The conduct has the purpose or effect of substantially interfering with a student's academic performance by creating an intimidating, hostile, or offensive education environment.

"*Student*" means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, a child enrolled in a day care program operated by a public school or merged area school under Iowa Code section 279.49, or is a resident between the ages of 5 and 21 of a state facility providing incidental formal education.

281—102.3(280) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report must include basic information showing that the victim of the alleged abuse is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

If the report is not investigable due to the absence of any of the jurisdictional facts, the level-one investigator shall dismiss the complaint as lacking jurisdiction and notify the person filing the report of abuse of the options remaining as listed in subrule 102.10(9). The dismissal of a report of abuse for lack of jurisdiction does not bar school officials from further forms of investigation and disciplinary action against an employee.

281—102.4(280) Exceptions.

102.4(1) The following do not constitute physical abuse, and no school employee is prohibited from:

- a. Using reasonable and necessary force, not designed or intended to cause pain:
 - (1) To quell a disturbance or prevent an act that threatens physical harm to any person.
 - (2) To obtain possession of a weapon or other dangerous object within a pupil's control.
 - (3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
 - (4) For the protection of property as provided for in Iowa Code section 704.4 or 704.5.
 - (5) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.
 - (6) To prevent a student from the self-infliction of harm.
 - (7) To protect the safety of others.
- b. Using incidental, minor, or reasonable physical contact to maintain order and control.

102.4(2) In determining the reasonableness of the contact or force used, the following factors shall be considered:

- a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.
- b. The size and physical condition of the student.
- c. The instrumentality used in making the physical contact.
- d. The motivation of the school employee in initiating the physical contact.
- e. The extent of injury to the student resulting from the physical contact.

281—102.5(280) Duties of school authorities. The board of directors of a public school district and the authorities in control of a nonpublic school shall:

102.5(1) Annually identify at least one designated investigator and alternate investigator at an open public meeting.

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator shall not be a school employee, and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions shall include the options of:

- a. Temporary removal of the student from contact with the school employee.
- b. Temporary removal of the school employee from service.
- c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures shall include a statement that the investigators appointed and retained under this chapter shall have access to any educational records of a student who is the named victim of alleged abuse, and access to the student for purposes of interviewing and investigating the allegation.

102.5(3) Annually publish the names and telephone numbers of the designated investigator and alternate:

- a. In the student handbook,
- b. In a local newspaper of general circulation, and
- c. Prominently post the same information in all buildings operated by the school authorities.

102.5(4) Arrange for in-service training for the designated investigator and alternate. Initial training should be undertaken within six months of appointing a level-one investigator or alternate. Follow-up training should be undertaken at least once every five years.

281—102.6(280) Filing of a report.

102.6(1) *Who may file.* Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

102.6(2) *Content of report.* The report shall be in writing, signed, and witnessed by a person of majority age, and shall contain the following information:

- a. The full name, address, and telephone number of the person filing.
- b. The full name, age, address, telephone number, and attendance center of the student.
- c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.
- d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.
- e. A list of possible witnesses by name, if known.
- f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

102.6(3) *Incomplete reports.* The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report shall not be rejected unless a reasonable person would conclude that the missing information which is unable to be provided by the reporter would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

281—102.7(280) Receipt of report. Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and shall not reveal the existence or content of the report to any other person.

281—102.8(280) Duties of designated investigator—physical abuse allegations.

102.8(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control.

102.8(2) Within five school days of receipt of a report of physical abuse, the designated investigator shall conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 102.3.

102.8(3) If, in the investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

102.8(4) The investigator shall interview the alleged victim, the school employee named in the report, and any collateral sources who may have knowledge of the circumstance contained in the report. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.8(5) The designated investigator's role is not to determine the guilt or innocence of the school employee, the applicability of the exceptions or reasonableness of the contact or force listed in rule 102.4(280). The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may conclude the investigation at level one. The designated investigator shall follow the applicable provisions of 102.11"2" and 102.11"3" when resolution occurs at level one.

The level-two investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, shall consider the applicability of the exceptions listed in rule 102.4(280) and the reasonableness of the contact or force used under subrule 102.4(2) in reaching conclusions as to the occurrence of physical abuse as defined by these rules.

102.8(6) Within 15 calendar days of receipt of the report, the designated investigator shall complete a written investigative report, unless investigation was temporarily deferred.

281—102.9(280) Duties of designated investigator—sexual abuse allegations.

102.9(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination is made that jurisdiction exists, the alleged victim has been interviewed, and a determination made that the investigation will not be deferred under subrule 102.9(5).

102.9(2) Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to 102.3(280) of these rules.

102.9(3) The investigator shall notify the parent, guardian, or legal custodian of a child, in prekindergarten through grade six, of the date and time of the interview and of the right to be present or to see and hear the interview or send a representative in the parent's place. The investigator shall interview the alleged victim as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.9(4) The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may conclude the investigation at level one. The designated investigator shall follow the applicable provisions of 102.11"2" and 102.11"3" when resolution occurs at level one.

102.9(5) If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 or section 728.12(1) took place, the investigator shall temporarily defer further level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined by Iowa Code chapter 709 or sexual exploitation as defined by Iowa Code section 728.12(1), but that was in the nature of inappropriate, intentional sexual behavior by the school employee, further investigation is warranted. The investigator may proceed to interview the school employee named in the report. Prior to interviewing any collateral sources who may have knowledge of the circumstance contained in the report, the investigator shall provide notice of the impending interview of student witnesses who are in prekindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded either because the conduct did not occur or the conduct did not meet the definition of abuse in these rules, further investigation is not warranted. The investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

102.9(6) Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator shall complete a written investigation report unless the investigation was temporarily deferred.

281—102.10(280) Content of investigative report. The written investigative report shall include:

1. The name, age, address, and attendance center of the student named in the report.
2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
3. The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.
4. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.
5. A general review of the investigation.
6. Any actions taken for the protection and safety of the student.
7. A statement that, in the investigator's opinion, the allegations in the report are either:
 - Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
 - Founded. (It is likely that an incident took place.)
8. The disposition or current status of the investigation.

9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:

- Contacting law enforcement.
- Contacting private counsel for the purpose of filing a civil suit or complaint.
- Filing a complaint with the board of educational examiners if the school employee is certificated.

The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report, the school employee's supervisor and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified only that the level-one investigation has been concluded and of the disposition or anticipated disposition of the case.

281—102.11(280) Founded reports—designated investigator's duties. The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code section 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

Upon receipt of the level-two investigator's report under rule 102.12(280) or upon resolution of the investigation at level one, the designated investigator shall:

1. Forward copies of the level-two investigator's report to the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor; notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation;

2. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent's signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

3. Arrange for counseling services for the student on request of the student, or the student's parent or guardian.

281—102.12(280) Level-two investigator's duties. Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse and the designated investigator's report, if any, promptly conduct further investigation and create a written narrative report. The level-two investigator's report shall state:

1. Conclusions as to the occurrence of the alleged incident; and
2. Conclusions as to the applicability of the exceptions to physical abuse listed in 102.4(280); or
3. Conclusions as to the nature of the sexual abuse, if any; and
4. Recommendations regarding the need for further investigation.

The written report shall be delivered to the designated investigator as soon as practicable.

The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

281—102.13(280) Retention of records. Any record created by an investigation shall be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation shall be retained by the public or nonpublic school for a minimum of two years.

Unfounded reports shall not be placed in an employee's personnel file. If a report is founded at level one and unfounded at level two, the founded report from the level-one investigator shall be removed immediately upon receipt of an unfounded report from the level-two investigator.

281—102.14(280) Substantial compliance. Because investigative procedures seldom allow for rigid observance of the protocol, substantial compliance with the rules is required with the overriding goal of reaching a fair and unbiased resolution of the complaint.

281—102.15(280) Effective date. These rules are effective on July 1, 1989, for school years 1989-90 and thereafter.

These rules are intended to implement Iowa Code section 280.17.

[Filed 2/10/89, Notice 12/28/88—published 3/8/89, effective 7/1/89]

[Filed 9/15/89, Notice 7/26/89—published 10/4/89, effective 11/8/89]

[Filed 11/16/89, Notice 10/4/89—published 12/13/89, effective 1/17/90]

[Filed 8/14/90, Notice 6/27/90—published 9/5/90, effective 10/10/90]

[Filed 11/19/92, Notice 9/30/92—published 12/9/92, effective 1/13/93]*

[Filed 9/13/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]

*Effective date of the following delayed seventy days by the Administrative Rules Review Committee at its meeting held January 5, 1993: 102.2(280), definitions of "Abuse," "Board of educational examiners," "Incident," "Injury," "Sexual harassment"; 102.3(280); 102.4(2), introductory paragraph; 102.8(5); 102.9(1), first sentence; 102.9(3), introductory paragraph; 102.9(4); 102.9(5), first and second unnumbered paragraphs; 102.10(280)"7"; 102.10(280), last paragraph; 102.11(280)"2"; 102.12(280), introductory paragraph; new 102.14(280); delay lifted by the Committee on February 8, 1993, effective February 9, 1993.